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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

IN RE APPLICATION OF ARTHUR J. PLANTAMURA FOR ADMISSION TO THE BAR.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

ARTHUR J. PLANTAMURA,
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Petitioner pro se.

Of Counsel:

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To The Honorable, The Chief Justice and The Associate Justices of the Supreme Court of the United States:

Petitioner herein prays that a Writ of Certiorari be issued to review the final decree of the Connecticut Supreme Court of Errors, in In re Application of Arthur J. Plantamura For Admission to the Bar, not yet reported, which denied petitioner's application for admission to practice law.

OPINIONS BELOW.

The decision sought to be reviewed is the final judgment of the Supreme Court of Errors of the State of Connecticut dated November 28, 1961, and announced on December 12, 1961, affirming the decision of the Superior Court of Fairfield County of Connecticut, 22 Conn. Sup. 213. A copy of the opinions rendered by said courts is annexed to this petition as appendix I and II, respectively.

Petitioner's motion for reargument of the decision of the Connecticut Supreme Court was denied without opinion on December 28, 1961.

JURISDICTION.

The statutory provision believed to confer jurisdiction upon this Court to review the judgment of the court below is United States Code, Title 28, Section 1257(3).

Although in this case the constitutional issue was not specifically raised until the petition for reargument was presented to the state court, petitioner submits that jurisdiction should be sustained because the rule adopted by the State Supreme Court supplies a new and unexpected basis for a claim of denial of a Federal right. The following cases are believed in support of jurisdiction:

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 US 673, 74 L ed 1107

Great Northern Railway Co. v. Sunburst Oil & Refining Co., 287 US 358, 77 L ed 360

due to the fact that the state court's course in disregarding earlier applicable decisions could not have been anticipated which decisions conflict with the ruling in this case and which have not been distinguished.

QUESTIONS PRESENTED FOR REVIEW.

1. Whether a state has absolute power over those who may practice law within its borders regardless of the validity of the ground imposed in denying admission; that is, whether a state may arbitrarily erect a barrier in the form of a qualification having no rational connection with fitness or capacity to practice law in excluding an attorney from another state who has long engaged in the practice of law, without in effect depriving him of property in the form of his right to his livelihood in contravention of the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

2. In a matter where an attorney from another jurisdiction seeks admission to the bar of a state on motion and the state acknowledges that:

> "The applicant has satisfied all requirements for admission. He has all educational qualifications, is of good moral character and has practiced (patent) law in the District of Columbia for more than five years."

May that state nevertheless arbitrarily deny petitioner's admission to practice law for a reason which has no rational connection with petitioner's fitness or capacity to practice law without violating petitioner's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

3. Whether an interpretive qualification of a state court rule for admission on motion to the state bar, which qualification conflicts with other interpretive decisions of the highest court of that state and which is the sole reason for excluding petitioner from admission to the state bar, arbitrarily deprives petitioner of his constitutional rights in the form of deprivation of property secured to him by the Constitution when it operates to bar him from admission to the practice of law in that state?

CONSTITUTIONAL PROVISION.

The state ruling which denies the motion of the petitioner, an attorney from the District of Columbia, for admission to practice in the State of Connecticut as an attorney solely for a reason which has

no rational connection with petitioner's fitness or capacity to practice law contravenes the Fourteenth Amendment to the United States Constitution because it deprives petitioner of property without due process and denies him the equal protection of the laws.

STATE RULE.

This case involves the validity of a qualification that requires court appearance in a state's rule governing admission of attorneys from another jurisdiction on motion and without examination.

The applicable part of the state rule (which is reproduced in full in the appendix), Connecticut Practice Book Sec. 8, reads:

> "Sec. 8. ADMISSION OF ATTORNEYS OF OTHER STATES. Any member of the bar of another state, who . . . (2) . . . has actually practiced law for at least five years in the highest court of original jurisdiction in one or more states, or in one or more district courts of the United States, and is in good standing, . . . may be admitted by the court as an attorney without examination . . ."

CONCISE STATEMENT.

The petitioner is an attorney admitted to the practice of law before the highest court of original jurisdiction in the District of Columbia in April, 1953. He was thereafter admitted to practice before the

Court of Customs and Patent Appeals in May, 1953, the U. S. Court of Appeals for the District of Columbia in August, 1953, and before the United States Supreme Court in January, 1959. He is, and for more than six years has been, a member of the American Bar Association and American Patent Law Association. He practiced in the District of Columbia subject to the jurisdiction and power of supervision of the District Court longer than the minimum period of five years required by the Sec. 8 of the Connecticut rule. At all times, petitioner was prepared to have recourse to any one of the above courts in the event that his client's matter necessitated that action. He was under no disability at any time which would prevent his appearance for litigation in any one of those courts. He has been denied admission by the state solely because in the course of his practice he did not appear in court.

It is not disputed that petitioner has engaged in the actual practice of law within the jurisdiction of the District of Columbia continuously and without interruption since his admission and for a period longer than the minimum period of five years required by Sec. 8 of the state rule governing admissions.

Petitioner applied for admission to the Connecticut Bar under Sec. 8 of the rules of the court (Connecticut Practice Book, 1951, as amended) governing admission on motion and without examination. His admission was not recommended by the Admissions Committee solely because of the committee's understanding that court appearances comprise a

critical qualification. The decision of the Superior Court which then heard petitioner's case states:

> "The facts are undisputed. The applicant has satisfied all requirements for admission. He has all educational qualifications, is of good moral character and has practiced (patent) law in the District of Columbia for more than five years."

However, believing itself bound by the State's Supreme Court ruling in In re Application of Dodd, 132 Conn. 237, 43A 2d 224, the Superior Court affirmed the Admission's Committee. The Superior Court denied a motion to reargue. On appeal to the State Supreme Court, petitioner demonstrated that in fact the Dodd case was irreconcilable with the Superior Court's ruling. The State Supreme Court, without distinguishing, disregarded the Dodd decision which is the single decision that considers the provision of the rule under consideration.

The sole obstacle forming the basis for refusing petitioner's admission in this case is that in his practice of law petitioner did not appear in court during his actual practice of law before that court, which admitted him, and Sec. 8 of the state rule, it is said, requires practice of law in the form of presence in the court. Petitioner, supported by applicable decisions of the highest court of Connecticut, contends that no valid distinction can be drawn between the part of the work of a lawyer involving appearance in court and the part which involves advice and the drafting of instruments. The showing of actual uninterrupted and continuous prior practice of law on the part of petitioner, including his appearance in the necessary court for admission to practice there-

in, was disregarded and held to be entitled to no greater weight than a mere unexercised right to practice. In substance, the Connecticut Supreme Court applied the portion of its rule which reads:

> "actually practiced law for at least five years in the highest court of original jurisdiction."

to mean that personal appearance in court is a critical prerequisite to admission. The state rule, albeit inadvertently, thereby indicates to an attorney from another jurisdiction that he had best arrange his client's matters so that his practice of law brings him into court if admission to its state bar is to be expected.

THE FEDERAL QUESTION.

The constitutional question was raised expressly in this case by petitioner's motion to reargue the decision of the State Supreme Court. The motion to reargue was denied.

Although a constitutional question is not ordinarily timely raised when first presented by a motion for reargument, petitioner submits that the federal question developed in the State Supreme Court and it was raised at the first opportunity and passed upon adversely. **San Jose Land & Water Co. v. San Jose Ranch Co.,** 189 US 177, 47 L ed 765. Jurisdiction is believed proper under the exceptions to the general rule because of the State Supreme Court's arbitrary disregard of earlier applicable decisions, its entirely unsupported position, and because its ruling directly conflicts with earlier decisions of that court which comprise a part of the governing law

of that state. Petitioner could not have reasonably anticipated that the state court would not follow existing law, and specifically that it would not adhere to, or consider, the rule adopted in earlier applicable decisions of that state.

The appropriateness of jurisdiction where, as here, the constitutional issue is raised on a motion for rehearing finds support in:

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 US 673, 74 L ed 1107 and

Great Northern Railway Co. v. Sunburst Oil & Refining Co., 287 US 358, 77 L ed 360.

The practical operation of the conflicting rule adopted by the state in this case violates the Constitution; the jurisdiction of the United States Supreme Court may not be defeated by a state by putting forward a non-federal ground of decision which is without any fair or substantial support. **Wolfe v. North Carolina,** 364 US 177, 4 L ed 2d 1650, 80 S Ct 1482.

The State Court's judgment cannot be sustained on an independent ground of state law because petitioner has complied with all sound state imposed qualifications which have a rational connection with petitioner's fitness and capacity to practice law. The judgment cannot be sustained on an adequate independent ground of state law because the qualification of court appearance(s) imposed against petitioner is not supported by any prior authoritatively declared rule of Connecticut or of any jurisdiction. In fact, it conflicts with decisions of the highest court

of Connecticut. The judgment cannot be sustained on an adequate independent state ground because the qualification is capricious and outside the scope of reasonable safeguards which a state may fairly adopt in the public interest. The state rule, arbitrarily declared and wholly unsupported in this case, is in fact repugnant to national rights and uniformity of judgments.

ARGUMENT.

I. High Standards Is Not An Issue.

A state may make its requirements as strict as it feels are necessary to protect the public and the courts but the requirements should in fact be necessary and proper and having a fair and consistent legal basis. Petitioner complied with each of the sound prerequisites of the state governing admission to practice law on motion. It is hopeless to expect that one may also comply with arbitrary barriers having no guides and no rational connection to an applicant's fitness or capacity to practice law. The Due Process Clause is applicable to matters of substantive law as well as to matters of procedure. This clause of the Constitution is violated here. Patent lawyers in Connecticut, qualified in every respect including graduation from approved scientific and legal institutions and having long years of actual practice of law, are denied admission on an arbitrary concept that some appearances in court for some uncertain period of times will establish a qualification. In effect, a federal question of substance has been decided in a way not in accordance with ap-

plicable decisions of this Court because the attorney is deprived of property, in the form of his right to continue in the practice of law, without due process. He is excluded from admission to a bar to which he qualifies in all respects excepting a state created qualification which has no rational connection with the attorney's fitness or capacity to practice law and has no basis in law.

II. The Safeguard Ruling Is In Fact Superficial.

The State Supreme Court states that the qualification of court appearance provides a "safeguard" to the state. The "safeguard" reason may provide some support for the temporary license feature of Sec. 8 of the Court rule. Insofar as it applies to one who has been admitted and has actually practiced law and is otherwise fully qualified, it is without any fair or substantial support. In this case, the purported non-federal ground is not a tenable one because: it is arbitrary; it does not rest on an adequate state ground; it is unsupported in law; it, in fact, conflicts with Connecticut law; and it encourages a conduct contrary to the Canons of Ethics. The State Court's reason that "The framer of the rule could reasonably consider that such a requirement would provide a fair and desirable safeguard" is seemingly an effort to support the decision on an independent non-federal ground to defeat the jurisdiction of this Court. **Enterprise Irrigation District v. Farmers Mutual Canal Co.**, 243 US 157, 164, 61 L ed 644, 649. This appears particularly significant because it is exclusively that Court which frames the rule and because no authority is mentioned for the position adopted.

Other states have similar language, yet none have adopted a similar position.

The qualification conflicts with law and reason and, because of its arbitrary and conflicting impression, it has an adverse and confusing influence on the public interest. Its obvious effect is to deny certain attorneys from other jurisdictions the right to continue to counsel clients and prepare legal instruments, not for a sound reason, but for an arbitrary insubstantial reason. It has the further obvious effect on attorneys in other jurisdictions, having the contingency in mind of relocation to Connecticut, of tending to encourage the prolongation of litigation into court when ethically the client could be advised to avoid or end litigation whenever the controversy will admit of fair adjustment (Canon 8, Canons of Professional Ethics). It is therefore submitted that a qualification of the kind imposed by the state which insists on court appearance is undesirable because a sounder legal procedure would appear favored by a more ethical decision along the way.

III. In The Absence of a Valid Reason, An Attorney Has a Right to Practice Law.

Irrespective of whether the practice of law is a "right" or "privilege" in situations involving persons seeking to practice law in the first instance, when the matter involves the admission of an attorney from another jurisdiction, the attorney has the right to admission to practice except for a valid reason. Such practice is not a matter of a state's grace. **Schware v. Board of Bar Examiners,** 353 US 232, 1 L ed 2d 796, 77 S Ct 752.

IV. The State Supreme Court and Not The Committee Establishes The Rule.

In Connecticut, decisions on matters involving proceedings for admission to the bar reside exclusively in the Supreme Court of that State. That court has often restated its power in such matters.

> "The Supreme Court of Errors . . . has the inherent power, independent of and despite any statute, to make rules governing procedure before it . . . By virtue of the provisions of § 27 of No. 651 of the 1957 Public Acts, the judges of the Supreme Court of Errors now have the power to adopt, promulgate, and from time to time modify or repeal rules and forms regulating pleading, practice and procedure in judicial proceedings in the courts established by the General Assembly."
>
> **State Bar Association v. Connecticut Bank & Trust Co.**, 145 Conn. 222, 232-233, (1958).

> "The bar examining committee is an arm of the court to which is entrusted the administration of specific details, including, and properly so, the power to act on the educational qualifications for admission to the bar . . . The committee can act, however, only under the supervision of the court. It is the court, and not the committee, which takes the final and decisive action."
>
> **Heiberger v. Clark**, 148 Conn. 177, 183-184 (1961).

V. Invalidity and Legal Conflict of Qualification Particularized In the Record.

The record clearly notes that distinctions made between the practice of a lawyer involving court appearance and that involving advice and drafting of instruments are unjust and invalid (R. p. 22, item 28). Also, emphasized is the position that a rule drawing a distinction in the practice of law on the basis of court appearance cannot be reconciled with the prior decisions of the State Supreme Court (R. p. 21, item 13; p. 27, item 39). In its decision in the present case, the State Supreme Court disregards its earlier decisions of **In re Application of Dodd,** 132 Conn. 237, 43 A 2d 224, and **State Bar Association v. Connecticut Bank & Trust Co.,** 145 Conn. 222, 149 A 2d 863, which petitioner submits are directly applicable and which are critical in deciding petitioner's case. The State Court could only reach the conclusion it has by excluding, as it did, those decisions. Yet, in a recent case, involving the power of the legislature on matters of admission to the bar, decided by the State Supreme Court less than nine months earlier in **Heiberger v. Clark,** 148 Conn. 177, 169 A 2d 652, both the Dodd and State Bar Association cases, supra, were considered by the court even though the facts in the Heiberger Case are substantially more remote to those decisions than petitioiner's case. Significantly, the State Bar Association case, 145 Conn. 222, is cited under Sec. 51-80, Chapter 876 (of the Official Text of the General Statutes of Connecticut) which governs admission of attorneys. Moreover, the State Supreme Court disregarded other authorities cited by petitioner. The Court cited none in support of its conclusion.

It is thus submitted that the disposition of petitioner's application for admission to practice in the state was entirely arbitrary and without due regard for applicable legal basis.

VI. Court Appearance is Contingent on a Client's Interest — It May Not Be Forced.

Petitioner during his practice was under no disability to prevent him from appearing in court. Furthermore, in the practice of law, petitioner had many occasions, as may be verified from his practice before the Patent Office, to exercise the discretion of appearing in court under the provisions of 35 USC § 145 (see appendix IV) wherein dissatisfaction is the sole prerequisite to court litigation. Simply because patent lawyers as a rule favor a fair adjustment of client's claims in the Patent Office rather than prolong the matter in the courts is not a sound reason for disqualification. No rule should suggest or tend to encourage aims conflicting with an attorney's obligations. This is best expressed by the Connecticut Court's own words when it said:

> "A dual trust is imposed on attorneys at law. They must act with fidelity both to the courts and to their clients. They are bound by canons of ethics which are enforced by the courts. The relation of an attorney to his client is pre-eminently confidential. It demands on the part of the attorney undivided allegiance, a conspicuous degree of faithfulness and disinterestedness, absolute integrity and utter renunciation of every personal advantage conflicting in any way directly or indirectly with the interests of his client."

State Bar Association v. Connecticut Bank & Trust Co., 145 Conn. 222, 234.

A further effect of the arbitrary qualification of court appearance imposed by the state, due to the deference of federal district courts to states in which they are situated, is to deprive attorneys specializing in federal law who become citizens of the state the right to practice in a court of the federal system to which they have qualified, for a reason which has no rational connection to the attorney's fitness or capacity to practice law. The consequence is that the state makes the federal court a participant of the arbitrary ruling. In this situation, the character of the qualification of the state rule and the fact that the qualification has been treated differently in similar situations makes it clear that the State Court considers it a matter of the state's grace whether petitioner may practice law. Petitioner's prior qualification, his admission to practice law and the fact that he actually engaged in the practice of law is rendered immaterial by the state rule in considering the value of prior practice of law as applied to "safeguards". One further obvious effect of the state ruling requiring court appearances by attorneys is that the qualification need not be consistent with law in that state.

VII. The Schware Case.

In **Schware v. Board of Bar Examiners**, 353 US 232, 1 L ed 2d 796, the United States Supreme Court held that while a state may require high standards of qualifications, any qualification it requires must

have a rational connection with the applicant's fitness or capacity to practice law. There is no reason why this basic precedent on national rights should not apply here. All suitable qualifications affording safeguards to the state have been complied with. The rule applied in this case, requiring court appearance in the practice of law as a prerequisite to admission, is outside the scope of reasonable and proper safeguards; it lacks a rational connection with petitioner's fitness or capacity to practice law even if the matter of admission on motion without examination itself may generally be construed as a discretionary action. The qualification is in fact entirely arbitrary and discriminatory against those engaged primarily in the practice of federal law as it affects individual rights and is, therefore, prejudicial. The end result is that proficiency in an area of the law which necessitates relatively infrequent court appearances is made a basis of disqualification from the practice of law in the state.

VIII. No Precedent in State Law for the Court's Rule.

The qualification of court appearance is not reconcilable with existing law in Connecticut.

The State Supreme Court held in an earlier decision, **In re Application of Dodd,** 132 Conn. 237, 242, that "Practice of law is not confined to practice in court." At that time the Court was concerned with the identical provision of the state rule (Sec. 8) and the Court accepted as practice of law administrative activity. The memorandum of decision of the Superior Court in the Dodd case is the only prior state

interpretation as to what the words "has actually practiced . . . in the highest court of original jurisdiction" of Sec. 8 mean. These words in Sec. 8 of the Connecticut rule have not been changed since that decision. The court held:

> "Our rule fixes no standard as to what that practice shall consist of, whether one case in ten years or one case a year. It was suggested that the Lord Chief Justice of England could not be admitted under our rule. Of course not, he is not a member of a state bar, so far as is known. Among the legal fraternity there is frequent discussion as to the legal merit of a trial attorney as against an office attorney. Many of the most eminent attorneys in the large cities of this country and in this state never appear before any court, unless it be a probate court. Judges of our higher courts have occasionally had the same experience. Custom makes law, however, and it has been the recognized custom of our committees on recommendation to consider that one so entitled to practice is an actual practitioner."

While the State Supreme Court in that case overruled the conclusion of the Superior Court which admitted the applicant in the Dodd case, it nevertheless in its decision adopted the reasoning there when it accepted under Sec. 8 of the state rule, administrative non-court work as actual practice of law "in the highest court of original jurisdiction". Thus, the Supreme Court disregards a most pertinent precedent without distinguishing it. The Dodd case deals with the specific provision in dispute and a just disposition of petitioner's case warrants its full consideration. The arbitrariness of the decision in this case

is brought out strikingly by the fact that even now no one is apprised as to what the rule requires in the matter of appearance in court. Is one appearance in five years adequate, or is one appearance each month a requirement? Complete uncertainty prevails even though the State Court in the Dodd case made a point of labelling "practice of law" as a specific concrete requirement.

In another decision, **State Bar Association v. Connecticut Bank & Trust Co.**, 145 Conn. 222, the State Supreme Court in discussing those who may practice law states at page 235:

> "No valid distinction can be drawn between the part of the work of the lawyer which involves appearance in court and the part which involves advice and drafting of instruments."

In deciding petitioner's case, however, the state court arbitrarily adopted a rule conflicting with both of these earlier decisions. The State Court did not distinguish these cases. The state's position as a consequence of the ruling in petitioner's case is such that practice of law means one thing for some cases and another thing for others. The petitioner could not have anticipated this conflicting position of the State Court before the event of the court's decision, **Great Northern Railway Co. v. Sunburst Oil & Refining Co.**, 287 US 358, 77 L ed 360.

CONCLUSION.

This case presents a question "whose resolution has immediate importance far beyond the particular facts and parties involved". The reason relied upon by the state in refusing to admit petitioner to practice law has no rational connection with petitioner's fitness or capacity to practice law. The state rule is entirely arbitrary. In consequence, it has the tendency to encouraging court litigation. Its effect is punitive upon an attorney having special proficiency in an area of law which requires less frequent recourse to court appearance. It permits the state to deprive an attorney from another state, who may be too advanced in years to take the written examination, of his livelihood for a reason having no rational connection with the attorney's fitness or capacity to practice law. The rule, if allowed to stand, would tend to generate occasions for charges of, or at least public impressions of, unauthorized practice incidents by attorneys entirely qualified to engage in the practice of law who may move into Connecticut.

It is respectfully requested that the Supreme Court exercise its power of supervision to forestall the consequences flowing from the arbitrary ruling of the state which makes court appearance a critical qualification for admission.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the seal of this Court, directed to Connecticut Supreme Court of Errors to the end that the judgment

of that Connecticut Court may be reviewed and reversed by this Honorable Court.

Respectfully submitted,

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SUPREME COURT OF ERRORS

November Term, 1961

Date of Supreme Court Judgment — Nov. 28, 1961

Decision Announced — Dec. 12, 1961

IN RE APPLICATION OF ARTHUR J. PLANTAMURA FOR ADMISSION TO THE BAR.

Application by Arthur J. Plantamura for admission to the bar without examination, brought to the Superior Court in Fairfield County and heard by the court, **Bordon, J.**; judgment denying the application, from which the applicant appealed, **No error.**

Arthur J. Plantamura, pro se, the appellant.

Joseph G. Shapiro, with whom was **Joseph J. Devine,** for the appellee (standing committee for Fairfield County on recommendations for admission to the bar).

King J. The applicant was admitted to the bar of the District of Columbia on April 24, 1953. Thereafter, he practiced patent law in Washington for more than five years. On October 19, 1960, he applied for admission to the bar of Connecticut without examination under § 8, page 27, of the Practice Book, as amended in a matter immaterial to the present controversy (Cum. Sup. 1960). From a denial of his application he has appealed.

Proceedings for admission to the bar "are in the nature of investigations by the courts or their repre-

sentatives to determine whether the candidate is qualified to become an officer of the courts." **Heiberger v. Clark,** 148 Conn. 177, 182, 169 A.2d 652. Such proceedings "are taken primarily for the purpose of preserving the courts of justice from the official ministration of persons unfit to practice in them." Id., 183. Attorneys are "officers of the court appointed to assist the court in the administration of justice and . . . the property, liberty and often the lives of their clients are in their hands, so that a very high degree of intelligence, knowledge, academic and legal training [and] judgment . . . is demanded." Id., 186. It is unnecessary to repeat the principles governing admission to our bar and the paramount power of the court in that connection; these are clearly set forth in the **Heiberger** case, supra.

The application was denied solely on the ground that the applicant had not fulfilled the requirements in subdivision (2) of § 8, the material portions of which are set out in the footnote.[1] Although the applicant claimed that he had practiced patent law in Washington for more than five years, he admitted that at no time had he had occasion to practice, nor had he in fact practiced, in the United States District Court for the District of Columbia, which is "the highest court of original jurisdiction" in the

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[1] "[Practice Book] Sec. 8. ADMISSION OF ATTORNEYS OF OTHER STATES. Any member of the bar of another state, who . . . (2) has actually practiced law for at least five years in the highest court of original jurisdiction in one or more states, or in one or more district courts of the United States, and is in good standing, may be admitted by the court as an attorney without examination . . ." (Section as effective May 15, 1957.)

District of Columbia and is a "district court of the United States." See Practice Book § 8.

The question dispositive of this appeal is the meaning, in its application to the applicant, of the phrase "actually practiced law for at least five years in the highest court of original jurisdiction . . . or in one or more district courts of the United States." The claim that the applicant is entitled to admission necessarily requires a construction of "actually practiced" as "been authorized to practice." Obviously, under that construction the applicant would be entitled to admission.

The word "actually" was added by an amendment, effective February 1, 1941, to § 8 of the 1934 Practice Book. It is not to be assumed that such a change would have been made without reason. **Brown v. Cato,** 147 Conn. 418, 421, 162 A.2d 175. Clearly, the word "actually" was inserted to emphasize the necessity of practice before a court as distinguished from a mere unexercised right to practice. Actual practice in the highest court of original jurisdiction provides a crucible for testing legal knowledge and its practical application in behalf of clients. The framers of the rule could reasonably consider that such a requirement would provide a fair and desirable safeguard for the citizens of Connecticut who might employ an attorney who had been a member of the bar of another jurisdiction and thereafter had been admitted without examination to practice in this state. In the light of the 1941 amendment, § 8 must be construed to require "actual practice" and not merely "authority to practice."

It is true, as the applicant points out, that many of the most successful and respected members of our bar seldom appear in the Superior Court, our highest court of original jurisdiction. This does not, however, destroy or minimize the obvious purpose of the framers of the rule.

As a subordinate claim, the applicant contends that the requirement is ambiguous in that it is not clear with what frequency and to what extent actual practice in court is required in order to comply with the rule. We are spared the necessity of determining this question, since in this case the applicant admittedly has not appeared in court in connection with litigation before the United States District Court for the District of Columbia nor, for that matter, before any other highest court of original jurisdiction. It is unnecessary to discuss the other claims of the applicant.

There is no error.

In this opinion the other judges concurred.

SUPERIOR COURT
FAIRFIELD COUNTY
DECEMBER 30, 1960

IN RE APPLICATION OF ARTHUR S. PLANTAMURA FOR ADMISSION AS AN ATTORNEY ON MOTION AND WITHOUT EXAMINATION

MEMORANDUM OF DECISION.

The applicant filed an application with the Clerk of the Superior Court for Fairfield County for admission as an attorney on motion and without examination. The facts are undisputed. The applicant has satisfied all requirements for admission. He has all educational qualifications, is of good moral character and has practiced (patent) law in the District of Columbia for more than five years. The Fairfield County Standing Committee on recommendations for admission to the Bar recommended that the applicant's application be denied, and, at a meeting of the Bar held on December 2, 1960, the report of the Committee was unanimously approved and adopted. The reason for the denial of the application is that the applicant has failed to meet the requirements for admission on motion in that he has not **actually** practiced law for at least five years in the highest court of original jurisdiction in one or more of the states, or in one or more of the district courts of the United States. Section 8, Superior Court Rules of admission to the Bar. It is admitted that he has practiced law in the District of Columbia for more than five years, and it is likewise admitted that during that period he has not practiced in any court.

The proceeding before the court comes in the nature of an appeal from the action of the Admission Committee in denying applicant's application for admission on motion.

The Committee claims that the Court is without power to review its action, particularly if it is regular, fair and not the result of prejudice or ill will. The applicant admits that no prejudice or ill will motivated the Committee's action.

An examination of the applicable law on the subject leads to the conclusion that the Court has the power to review the action of the Admission Committee and the Bar in withholding their recommendation for admission. **O'Brien's Petition,** 79 Conn. 46; **Higgins v. Hartford County Bar Asso.,** 111 Conn. 47; **Rosenthal v. State Bar Examining Committee,** 116 Conn. 409; **Bazil v. Boardman,** 127 Conn. 475; **Blaney v. Standing Committee,** 129 Conn. 51. However, if it appears to the Court that the Committee and the Bar withheld their recommendation for admission after an investigation, and that they acted fairly and reasonably and not from prejudice or ill will, their decision will not be disturbed. O'Brien's Petition, supra.

The applicant admits that the Committee acted reasonably, but claims that its interpretation of Sec. 8 of the rules is erroneous and too strictly construed. Section 8 deals with the admission of attorneys of other states without examination. One of the requirements for such admission is that the applicant has **actually** practiced law for at least five years in the highest court of original jurisdiction in one or

more states, or in one or more district courts of the United States. The Committee claims that even though the applicant has been a member of the Bar of the District of Columbia for the requisite period and has, in all other respects, met the necessary qualifications, his admitted failure to practice in any court is a fatal disqualification. The applicant is asking the Court to liberally construe the appropriate section so that any attorney who has practiced law elsewhere and has met all other requirements, be admitted even though his practice did not require his presence in court.

There is no doubt that many attorneys confine their practice to the office and rarely, if ever, engage in court work. As was said by our Supreme Court in **State Bar Assn. v. Connecticut Bank & Trust Co.** and **State Bar Assn. v. Hartford National Bank and Trust Co.**, 145 Conn. 222, "Practicing law is not limited to appearing in court or advising in the conduct of litigation, but embraces the preparation of pleadings and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds and the giving of legal advice to clients."

This case, however, did not deal with qualifications for admission to the Bar. It only concerned itself with a determination of whether certain practices of the defendant constituted the unlawful practice of law. Once an attorney has been admitted after examination he has the right to confine his practice to any field or branch of the law suitable to him. He need never engage in court work. Under the growing problems and complexities confronting clients to-

day, many outstanding lawyers devote themselves exclusively to office work, and refer court matters to counsel experienced in this field of work. Such practice does not violate any law or rule regulating admission to the Bar. Our Supreme Court has given judicial recognition of present day problems in the following language: "No valid distinction can be drawn between the part of the work of the lawyer which involves appearance in court and the part which involves advice and the drafting of instruments." **State Bar Assn. v. Connecticut Bank & Trust Co.**, supra. But the Court cannot construe that to mean that an out of state attorney who has had no court practice is eligible for admission if Rule 8 restricts such admission without examination only to applicants who have actually practiced in court. If the applicant took and passed the prescribed examinations, he could restrict his practice to any field chosen by him. But if he desires admission without examination he must conform to the requirements for such admission.

The State Bar case, relied on by the applicant, does not warrant relaxation of the requirements for admission. The language differentiating between various activities of lawyers is intended to illustrate what activities constitute unauthorized practice of law. It is in harmony with the decision in **Grievance Committee of the Bar of New Haven County v. Payne**, 128 Conn. 325, which held that searching titles for banks and attorneys by a Town Clerk was an invasion of the field of law and amounted to practice of law.

The Court is sympathetic with the applicant's con-

tention and inclines to a liberal interpretation of the rule. The road block to such action, however, seems to be the decision of the Supreme Court in the case of **Application of Dodd for admission to the Bar,** 132 Conn. 237. In that case the Committee had recommended his admission as a candidate "who has complied with the rules relating to admission." He had been admitted to the Bar of South Dakota but had not practiced there, although he was actively engaged in the trial of government cases in various states, not including South Dakota. The Court held that he had not qualified for admission to the Bar without examination because he had not actually practiced in the highest court of original jurisdiction of the state in which he was admitted.

The Court's indulgence does not lead it to the path of least resistance. It has been the settled and unbroken practice of our courts, under legislative sanction and authority, to admit no one as an attorney not recommended by the Bar of the County. O'Brien's Petition, supra. Under established rules, any qualified person may take examinations for admission. If, however, he chooses to seek admittance without examination, he is not the victim of discrimination if the Committee and the bar insist on strict compliance with the rule.

Although the applicant's practice may have exposed him to some contact with the courts of his district, the fact remains that, during his practice, he has had no contact or association with any court. He has never brought or caused to be brought any proceeding into a court, has never filed a pleading, nor exposed himself to any judicial process or action.

Because of this admitted fact the Committee and the Bar, acting reasonably and without ill will, have denied his application. In re Dodd, supra.

It may well be that our Supreme Court may, in the future, adopt the liberal interpretation sought by the applicant. Under the circumstances herein involved, and under the cases herein cited, the Court is of the opinion that the Committee acted properly and its action should be sustained.

The appeal of the applicant is dismissed.

Bordon, J.

THE CONNECTICUT PRACTICE BOOK
of 1951

1960 Cumulative Supplement

(Dec. 20, 1960)

Sec. 8. Admission of attorneys of other states. Any member of the bar of another state, who, after satisfying the state bar examining committee that his educational qualifications are such as would entitle him to take the examination in this state or would have entitled him to take the examination in this state at the time of his admission to the state bar of which he is a member, shall satisfy the appropriate standing committee on recommendations for admission that (1) he is of good moral character; (2) he has actually practiced law for at least five years in the highest court of original jurisdiction in one or

more states, or in one or more district courts of the United States, and is in good standing, provided if he has taken the bar examinations of this state and failed to pass them, he has actually practiced law at least ten years in such court or courts, and is in good standing; (3) is a citizen of the United States; (4) for not less than six months immediately preceding the application has been an actual resident of this state; and (5) intends to devote the major portion of his practice of the law to the state of Connecticut, may be admitted by the court as an attorney without examination upon written application and the payment to the clerk of a fee of $100, upon compliance with the following requirements: Such application, duly verified, shall be filed in duplicate with the clerk of the superior court in the county in which the applicant resides and shall set forth his qualifications as hereinbefore provided. There shall be filed with such application the following certificates or affidavits with one copy of each: Affidavits signed by two attorneys who personally know the applicant certifying to his good moral character and supporting, to the satisfaction of the standing committee on recommendations for admission to the bar, his actual practice of law as defined under (2) of this section; an affidavit signed by two members of the bar of this state of at least five years' standing that the applicant is of good moral character and has actually resided in this state for not less than six months immediately preceding the date of the filing of his application; and a certificate from the state bar examining committee that his educational qualifications are such as would entitle him to take the examination in this state or would have entitled him to take the examination in this state at the time of his admission

to the state bar of which he is a member. (Amended Feb. 25, 1957, to take effect May 15, 1957.) [No change in balance of Sec. 8, which follows.]

Upon the filing of such application, certificates and affidavits, said clerk shall send a copy thereof to the chairman of the standing committee on recommendations for admission to the bar. When said committee shall have acted upon the application it shall notify said clerk and he shall give notice to every member of the bar of the county of a meeting of the bar of the county at which the report of the standing committee on recommendations upon the application will be presented. After said application is acted upon at such bar meeting, the standing committee on recommendations for admission shall file with the clerk a copy of its report, with the action of the meeting indorsed thereon. The application for admission may then be claimed for the short calendar, of which claim the clerk shall give notice to every member of the bar of the county. Such admission shall, however, be upon a temporary license for a period of one year. Not less than thirty nor more than sixty days before the expiration of such temporary license the applicant may file his motion that such license be made permanent with the clerk, who shall forthwith give notice thereof to the standing committee on recommendations for admission. Said committee shall claim the motion for the short calendar as soon as it is prepared to make recommendations thereon to the court. If it shall appear to the court at a hearing thereon that said applicant has, since his admission, resided and devoted the major portion of his practice of the law in the state of Connecticut and intends to continue so to reside and

practice, and that his moral qualifications remain satisfactory, such license shall be made permanent; but if he shall fail to make such motion or if the court shall upon the hearing thereon refuse to make such finding, then said temporary license shall terminate upon its expiration, but the court may for good cause shown continue said hearing and extend said license for a period of not more than three months from the original date of its expiration.

Provided, however, that whenever, during the period for which such temporary license may have been issued, such licensee has entered the military or naval service of the United States and by reason thereof has been unable to continue in practice in Connecticut, the period between such entrance and his final discharge from such service, or other termination thereof, shall not be included in computing the term of such temporary license; and upon satisfactory proof to the court hearing said motion for a permanent license of such entrance and discharge or other termination, and of compliance with the other requirements of this rule, the court may make such license permanent.

35 USC § 145

Civil Action to Obtain Patent

An applicant dissatisfied with the decision of the Board of Appeals may unless appeal has been taken to the United States Court of Customs and Patent Appeals, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The court may adjudge that such applicant is entitled to receive a patent for his invention, as specified in any of his claims involved in the decision of the Board of Appeals, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirments of law. All the expenses of the proceedings shall be paid by the applicant.

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35 USC § 146

Civil Action in Case of Interference

(Provides for similar discretionary jurisdiction as 35 USC § 145 in decisions in patent interferences.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

IN RE APPLICATION OF ARTHUR J. PLANTAMURA FOR ADMISSION TO THE BAR WITHOUT EXAMINATION.

RESPONDENT'S BRIEF OPPOSING WRIT OF CERTIORARI.

JOSEPH G. SHAPIRO,
945 Main Street,
Bridgeport, Connecticut,
Counsel for Respondent.

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CONSTITUTION AND RULES

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Constitution of Connecticut, Article V, Section 1, Appendix 4a

To The Honorable, The Chief Justice and The Associate Justices of the Supreme Court of the United States:

The respondent opposes the review of this cause, for the following reasons:

a. Admission to practice law in a State and befores its Courts belongs to that State, and is a privilege and not a right.

b. There is no constitutional question involved in the petition.

c. The petitioner did not raise the constitutional question until after the final decision of the Supreme Court of Errors of the State of Connecticut had been rendered, when he first raised it in a petition for reargument.

d. The petitioner was afforded the privilege of taking the bar examinations, but he declined to do so, demanding admission without examination.

COURT RULES FOR ADMISSION TO BAR.

The Superior Court of the State of Connecticut has adopted rules governing admission to the bar.

There are two methods governing admission to the bar, a. by taking bar examinations, and b. admission on motion without examination.

a. The provision relating to taking bar examina-

tions (which is reproduced in the Appendix) Connecticut Practice Book Sections 1, 4 and 7, provides that any citizen of the United States may take the bar examinations, if he complies with the standards and requirements set forth.

b. The provision relating to admission on motion without examination is reproduced in the petitioner's brief, in the Appendix, pages 10a, 11a, 12a, 13a; and is cited as Section 8.

These two methods were concisely stated by the Superior Court, in the decision denying the petitioner's application, thus

> "Under established rules, any qualified person may take examinations for admission. If, however, he chooses to seek admittance without examination, he is not the victim of discrimination if the Committee and the Bar insist on strict compliance with the rule."

Appendix to petitioner's brief, page 9a.

It is axiomatic that both the admission and disbarment of attorneys are judicial acts, and that one is admitted to the Bar and exercises his functions as an attorney "not as a matter of right, but as a privilege".

In re Thatcher, 80 Ohio St. 492, 654

In re Durant, 80 Conn. 140.

> "In this country the Courts of the United States have always controlled the admission of attorneys. * * * Their admission or their exclusion is not the exercise of a mere ministerial power.

It is the exercise of judicial power, and has been so held in numerous cases."

In re Day, 181 Ill. 73 at 89.

A court which extends the privilege to one to be admitted as an officer of such court may surely impose conditions upon such privileges granted by it.

"Article fifth, section 1 (Connecticut Constitution adopted in 1818) states: 'The judical power of the State shall be vested in a supreme court of errors, a superior court, and such inferior courts as the general assembly shall, from time to time, ordain and establish: the powers and jurisdiction of which courts shall be defined by law'. Fixing the qualifications for, as well as admitting persons to, the practice of law in this state has ever been an exercise of judicial power. * * * The power to admit persons to practice in this state has been exercised with the help and assistance of committees of the bar, pursuant to rules having the sanction of the judges of the Superior Court. * * * The reasons for this principle and practice have been fully discussed in our cases. It suffices to say that attorneys are officers of the Court appointed to assist the Court in the administration of justice and that the property, liberty and often the lives of their clients are in their hands, so that a very high degree of intelligence, knowledge, academic and legal training, judgment and, above all else, integrity is demanded."

Heilberger v. Clark et al, 148 Conn. 177, 185, 186.

An attorney from another state seeking admission without examination must comply with the rules of court governing such admission.

The petitioner was afforded the opportunity to apply to take the bar examinations, but he declined to do so.

Instead he insisted upon being admitted without taking the bar examinations, when he did not qualify under Section 8 of the rules, petitioner's appendix pages 10a, 11a, 12a. And he relies on the case of **Rudolph Schware v. Board of Bar Examiners, 353 U. S. 232, 1 Law Ed. 2nd 796; 77 S. Ct. 752** in support of his claim.

That case supports the decision of the Superior Court and Supreme Court of Errors printed in the petitioner's appendix, pages 1a, and 5a. There, the petitioner Schware applied for permission to take the bar examinations. His application was denied, and the denial was upheld by the Supreme Court of New Mexico, on the ground that the petitioner had not shown good moral character.

On certiorari the United States Supreme Court reversed the judgment below because on the record the New Mexico Supreme Court could not reasonably find that the petitioner had not shown good moral character.

The fact that the petitioner more than fifteen years before had admitted membership in the Communist party, and it was not shown to have been anything more than faith in a political party lawful

at that time, violated the due process law, because that did not make the petitioner "a person of questionable character".

Said the Court "A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. * * * Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for finding that he fails to meet these standards, or when their action is individiously discriminatory". Law Ed. pages 801, 802.

In that case, the State conceded that Schware was fully qualified to take the examination in all other respects other than good moral character. Thus, on page 802 the Court said:

> "The undisputed evidence in the record shows Schware to be a man of high ideals with a deep sense of social justice. Not a single witness testified that he was not a man of good character". Despite this showing the Court below thought certain facts raised doubts about his moral fitness. This was erroneous reasoning and had no factual basis.

On page 807, the Court stated the authority possessed by Courts in matters of admission to the bar, as follows:

> "Admission to practice in a State and before its Courts necessarily belongs to that State. * * *

It is beyond this Court's function to act as overseer of a particular result of the procedure established by a particular State for admission to its bar. * * * Especially in this realm it is not our business to substitute our judgment for the State's judgment — for it is the State in all the panoply of its powers that is under review when the action of its Supreme Court is under review."

That law confirms the respondent's claims.

In the case at bar, the petitioner admitted that he never actually practiced in the District Court of the United States a single instance.

"Although the applicant claimed that he had practiced patent law in Washington for more than five years, he admitted that at no time had he had occasion to practice, nor had he in fact practiced, in the United States District Court for the District of Columbia, which is 'the highest Court of original jurisdiction' in the District of Columbia."

Supreme Court of Errors decision, petitioner's appendix page 2a.

The requirement, in connection with an application for admission without examination, that the applicant shall have actually practiced in the highest court of original jurisdiction, is a proper, reasonable and just pre-requisite.

"Clearly, the word 'actually' was inserted to emphasize the necessity of practice before a court as distinguished from a mere unexercised right to prac-

tice. Actual practice in the highest Court of original jurisdiction provides a crucible for testing legal knowledge and its practical application in behalf of clients. The framers of the rule could reasonably consider that such a requirement would provide a fair and desirable safeguard for the citizens of Connecticut who might employ an attorney who had been a member of the bar of another jurisdiction and thereafter had been admitted without examination to practice in this State. In the light of the 1941 amendment, section 8 must be construed to require 'actual practice' and not merely 'authority to practice'."

Supreme Court of Errors decision, supra Appendix 3a.

No Constitutional Question Involved.

As heretofore submitted, the rules relating to admission to the bar, permits any qualified person to take the examinations.

The petitioner is afforded the equal protection of the laws, and is not deprived of any rights or privileges under the Due Process clause of the Fourteenth Amendment to the United States Constitution.

In Re Application of Dodd, 132 Conn. at 246.

If he refuses to take the examinations, as the petitioner is intent upon doing, he should not be permitted to claim his rights or privileges have been infringed.

But he claims, section 8 contains no rational connection with his fitness or capacity. This has been clearly answered in the decision of the Supreme Court of Errors, cited by the petitioner, in his Appendix 1a to 4a inclusive.

However, the petitioner did not raise any constitutional question until he filed a motion for reargument in the Supreme Court of Errors.

The petitioner, in the record which he filed, included his motion for reargument and statement in support thereof. In that statement, it appears "the Court has given no weight to the case of In re Application of Dodd, 132 Conn, 237". The statement claimed that the Dodd case interpreted the language "actual" and held unequivocally at page 242 that "Practice of law is not confined to practice in Court".

As a matter of fact the Dodd case decided that actual practice in court meant exactly what it said; and since Dodd had not actually practiced in the highest court of original jurisdiction (page 241) he was not entitled to admission without examination (page 246). The decision at its conclusion says "He is not remediless. He can take the examination."

In his brief in the Supreme Court of Errors case the petitioner laid great stress on the Dodd case. In his statement for re-argument he specifically claims that he cited the Dodd case. Evidently, just because the Supreme Court of Errors did not specifically quote the Dodd case, the petitioner imagines the Court did not consider it.

In his present brief, the petitioner, on page 2

claims the State Court disregarded earlier applicable decisions which conflict with the ruling in the present case. He does not cite a single case where that can be found. In fact all the cases are consistent with the decision in issue.

The petitioner's brief relies on two other Connecticut cases, viz: **State Bar Association v. Connecticut Bank & Trust Co.,** 145 Conn. 222, and **Heilberger v. Clark,** 148 Conn. 177.

The Bar Association case against the bank dealt with a definition of the general practice of the law. It did not involve practice in any court much less actual practice.

The Heilberger case deals with an applicant claiming that he was entitled, unconditionally to take the bar examinations, even though he did not qualify both because his educational qualifications did not meet the requirements as to his prelaw education and as to graduation from a law school which was accredited by the Committee. He endeavored to circumvent these two objections relying upon a statute which permitted him and those similarly situated, to take the examinations. The Court held the statute unconstitutional: **page 191.**

Therefore there was no rational reason for claiming for the first time, in the motion for reargument, the question of unconstitutionality.

There was no new and unexpected basis for a claim by the petitioner of the denial of a Federal right, and the claim that a constitutional question is

involved comes too late. **Great Northern Railway Co. v. Sunburst Oil & Refining Co.**, 77 Law Ed. 360.

Among the grounds upon which the Supreme Court of the United States may deny a writ of certiorari are that the decision may be supportable as a matter of State law not subject to review by the Supreme Court. **Maryland v. Baltimore Radio Show,** 338 U. S. 912; 94 Led. 562; 70 S. Ct. 252.

CONCLUSION.

The rules established by the Superior Court permit any qualified person to take examinations for admission to the bar. The petitioner refuses to comply with this rule.

The only suggestion or intimation for such refusal may be his reference to the fact that "an attorney from another State, who may be 'too advanced' in years to take the written examination", as appears on page 19 of the petitioner's brief.

"Proceedings for admission to the bar 'are in the nature of investigations by the courts or their representatives to determine whether the candidate is qualified to become an officer of the Courts'. **Heilberger v. Clark,** 148 Conn. 177 182, 169 A. 2nd 652. Such proceedings 'are taken primarily for the purpose of preserving the courts of justice from the official ministration of persons unfit to practice in them'." **In Re Application of Arthur J. Plantamura,** 176 A 2nd 61, cited in full in petitioner's Appendix

This is a fair, just and reasonable rule, and does not deny the equal protection of the law to the petitioner, nor does it violate the Fourteenth Amendment of the United States Constitution.

Another rule is also established — Section 8 — permitting qualified attorneys of other states to be admitted without examination. One of the requirements of this rule provides that the lawyer shall have actually practiced in the courts of the highest original jurisdiction. This rule, likewise, is to preserve the Courts of justice from official ministration of persons unfit to practice in them. If the applicant chooses to be admitted without examination, he is not the victim of discrimination if the Committee and the bar insist on strict compliance with the rule. This rule, too, is a fair, just and reasonable one.

Wherefore your respondent respectfully prays that the petition for a Writ of Certiorari be denied.

Respectfully submitted,
Standing Committee for Fairfield County on Recommendations for Admission to the Bar,
Respondent.

By JOSEPH G. SHAPIRO
Its Attorney and Chairman
945 Main Street,
Bridgeport, Conn.

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Constitution of Connecticut, Art. V, Section 1 1

RULES
of the
SUPERIOR COURT
of the
State of Connecticut
Regulating
Admission to the Bar

Edition of 1959

Sec. 1. ADMISSION. No person shall be admitted as an attorney except as herein provided.

Sec. 4. QUALIFICATIONS FOR ADMISSION. To entitle an applicant to admission to the bar (except under Sec. 8 of these rules) he must satisfy the committee:

FIRST. That he is a citizen of the United States.

SECOND. That he is a resident of this state or intends to become such resident.

THIRD. That he is not less than twenty-one years of age.

FOURTH. That he is a person of good moral character.

FIFTH. That he has complied with the following rules concerning prelaw education: (A) If his law studies pursuant to the rules commenced prior to

January 1, 1951, before commencing the study of law he (1) has graduated from a college the standing of which and the course or courses taken by the applicant shall be approved by the committee; or (2) has registered as a regular student or candidate for a degree in a college the standing of which shall be approved by the committee, and has attended and successfully completed courses acceptable to the committee constituting one-half of the work required for a degree in such college. (B) If his law studies pursuant to the rules commenced after January 1, 1951, before commencing the study of law he (1) obtained a bachelor's degree for acceptable undergraduate work in residence at a college accredited by the committee; or (2) completed, in residence at a college accredited by the committee, 90 semester or 135 quarter hours of college credit acceptable toward a bachelor's degree at such college and acceptable to the committee; provided that in such event a bachelor's degree must have been obtained at a college accredited by the committee before a law degree is obtained; or (3) obtained a master's degree for postgraduate work acceptable to the committee in residence at a college accredited by the committee, having already obtained a bachelor's degree for acceptable undergraduate work in residence at a college. The provisions of (B) aforesaid shall not apply to any applicant who served in the armed forces of the United States during World War II and was honorably discharged from such service and who, by reason of permanent and total, service-connected blindness, was unable to complete his pre-law education under (A) aforesaid prior to January 1, 1951, provided that such applicant

completed his prelaw education under (A) aforesaid and commenced his law studies prior to January 1, 1952.

SIXTH. That he has complied with the following rules concerning his legal education: After arriving at the age of eighteen years and having completed his prelaw education as provided for under subsection FIFTH of this section, he has (a) pursued the study of law as a regular law student in residence at and obtained a bachelor of laws degree from a law school accredited by the committee; or (b) obtained a master of laws degree for postgraduate work acceptable to the committee in residence at a law school accredited by the committee; or (b) already obtained a bachelor of laws degree at a law school for work acceptable to the committee done in residence at such law school.

SEVENTH. That he has registered his intention to study law in preparation for taking the bar examinations in accordance with these rules and the regulations of the committee and has paid a registration fee of $10.

EIGHTH. That he has filed with a clerk of the superior court his application to take the examination and for admission to the bar, all in accordance with these rules and the regulations of the committee, and has paid an application fee of $25.

NINTH. That he has satisfactorily passed an examination in law in accordance with the regulations of the committee.

TENTH. That he has complied with all of these

rules and the regulations of the committee pertinent to his application.

Sec. 7. COUNTY COMMITTEES ON RECOMMENDATIONS. There shall be in each county a standing committee on recommendations for admission, consisting of not less than three nor more than seven members of the bar of the county, who shall be appointed by the judges of the superior court to hold office for three years from the date of their appointment and until their successors are appointed. Appointments to fill vacancies may be made by the chief justice until the next annual meeting of the judges of the superior court.

All applications for admission to the bar shall be referred to the committee of the county where the application is filed, which shall investigate the general fitness of each applicant and report to the bar of the county whether he has complied with the rules relating to admission to the bar, is a person of good character and should be admitted.

Constitution of Connecticut. Article Fifth.

Section 1. The judicial power of the State shall be vested in a Supreme Court of Errors, a Superior Court, and such inferior courts as the general assembly shall, from time to time, ordain and establish: the powers and jurisdiction of which courts shall be defined by law.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 814

IN RE APPLICATION OF ARTHUR J. PLANTAMURA FOR ADMISSION TO THE BAR.

REPLY TO RESPONDENT'S BRIEF ON PETITION FOR WRIT OF CERTIORARI.

ARTHUR J. PLANTAMURA,
69 Edgewood Avenue,
Springdale, Connecticut.
Petitioner pro se.

Of Counsel:
WM. I. McCULLOUGH, JR.
5615 Elberton Court,
Hyattsville, Maryland.

The respondent's brief (p. 1, ¶ d; p. 7, last ¶ and p. 10, 3rd ¶) presents as a reason for opposition to the Petition that petitioner has declined and refused to take the written examination. This point is raised for the first time by respondent. There is no support for that allegation. Furthermore, it is immaterial to the rule under consideration.

The fact that petitioner persists in his contention that he meets all the qualifications under Sec. 8 of the rules and has been denied admission for an unsound reason should not be construed as a refusal to take the bar examination. Petitioner proceeded according to the rule (Sec. 8) under which he believes himself qualified and on the ground that he must first utilize all judicial remedies afforded to obtain admission on motion without written examination or be foreclosed from such course. Moreover, petitioner considers it salutary to the profession that there be a judicial review of the arbitrary requirement presented in this matter.

If the written examination route to admission could be construed as ipso facto providing the "qualification" of court appearance then there might be some merit to respondent's contention (p. 4 respondent's brief) that petitioner does not qualify under Sec. 8 of the rules. However, both the procedure governing admission by written examination and the procedure for admission on motion have the same safeguards of fitness, education, moral character, etc. Furthermore, one seeking admission on motion additionally must demonstrate actual practice of law for at least five years which petitioner has done.

Respondent's emphasis on the availabilty to petitioner of the rule governing admission by examina-

tion is seemingly intended to detract from the essence of the matter relating to the misuse of the particular rule (Sec. 8) which is here under consideration.

The premise that Sec. 8 which governs admission on motion was established under proper authority of the State through its judiciary is not disputed. The requirement of court appearances, however, is one not previously applied in decisions interpreting the rule in question so that even though the rule may have a rational connection when applied in a normal, fair and legally consistent sense, it has been rendered arbitrary and discriminatory in the decision below in its application.

A rule governing admission to the bar of a state is a valid exercise of state power. But the power is not absolute; it is subject to constitutional restraints. Moreover, once a rule is adopted pursuant to this power, it is subject to review when it subsequently becomes discriminatory or when the state's interpretation lacks substantial relation to the object which is sought to be obtained.

Respectfully submitted,

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